

106TH CONGRESS
2D SESSION

S. 2837

To amend the Fair Debt Collection Practices Act to reduce the cost of credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2000

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Fair Debt Collection Practices Act to reduce the cost of credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Cost Reduction
5 Act of 2000”.

6 **SEC. 2. EXEMPTION FOR COMMUNICATIONS INVOLVING**
7 **LEGAL PROCEEDINGS.**

8 Section 803(2) of the Fair Debt Collection Practices
9 Act (15 U.S.C. 1692a(2)) is amended—

1 (1) by striking “‘communication’ means” and
 2 inserting the following: “‘communication’—

3 “(A) means”;

4 (2) by striking the period at the end and insert-
 5 ing “; and”; and

6 (3) by adding at the end the following:

7 “(B) does not include any action taken
 8 pursuant to—

9 “(i) the Federal Rules of Civil Proce-
 10 dure;

11 “(ii) in the case of a proceeding in a
 12 State court, the rules of civil procedure
 13 available under the laws of such State; or

14 “(iii) a nonjudicial foreclosure.”.

15 **SEC. 3. COLLECTION ACTIVITY FOLLOWING INITIAL NO-**
 16 **TICE.**

17 Section 809 of the Fair Debt Collection Practices Act
 18 (15 U.S.C. 1692g) is amended by adding at the end the
 19 following:

20 “(d) CONTINUATION DURING PERIOD.—Collection
 21 activities and communications may continue during the
 22 30-day period described in subsection (a), unless the con-
 23 sumer requests the cessation of such activities.”.

1 **SEC. 4. LIABILITY FOR NONCOMPLIANCE.**

2 (a) CLARIFICATION OF LIMITATION ON CLASS AC-
3 TION AWARDS.—Section 813(a)(2)(B) of the Fair Debt
4 Collection Practices Act (15 U.S.C. 1692k(a)(2)(B)) is
5 amended—

6 (1) by inserting “or any series of class actions
7 arising out of the same violations by the same debt
8 collector” after “case of a class action”; and

9 (2) by inserting “of such class action or series
10 of class actions” after “all other class members”.

11 (b) ATTORNEYS FEES TO ENFORCE CIVIL LIABIL-
12 ITY.—Section 813(a)(3) of the Fair Debt Collec-
13 tion Practices Act (15 U.S.C. 1692k(a)(3)) is amended to read as
14 follows:

15 “(3) subject to subsection (f), in the case of a
16 successful action to enforce a liability under para-
17 graph (1) or (2), the costs of the action, including
18 reasonable attorney’s fees, as determined by the
19 court, in an amount not to exceed the amount
20 awarded in such action under the applicable para-
21 graph.”.

22 (c) RULES APPLICABLE TO CERTAIN ACTIONS.—Sec-
23 tion 813 of the Fair Debt Collection Practices Act (15
24 U.S.C. 1692k) is amended by adding at the end the fol-
25 lowing:

1 “(f) RULES APPLICABLE TO ACTIONS UNDER THIS
 2 TITLE.—Notwithstanding any other provision of law, in
 3 any action arising under this title, for purposes of rule
 4 68 of the Federal Rules of Civil Procedure, the following
 5 provisions shall apply:

6 “(1) PLAINTIFF’S ATTORNEY’S FEES.—Costs
 7 shall include reasonable fees for the plaintiff’s attor-
 8 ney.

9 “(2) DISALLOWANCE OF CERTAIN FEES ACCRU-
 10 ING AFTER REFUSAL OF SETTLEMENT OFFER.—In
 11 accordance with rule 68 of the Federal Rules of Civil
 12 Procedure, if—

13 “(A) an offer is made by the debt collector
 14 to a consumer bringing an action (including any
 15 class action or series of class actions referred to
 16 in subsection (a)(2)(B)) under this title, and
 17 the offer is not accepted; and

18 “(B) the amount of the final judgment
 19 awarded to the consumer (or, in the case of a
 20 class action or series of class actions, the total
 21 amount awarded to all class members in such
 22 class action or series of class actions) is less
 23 than or equal to the amount of the offer re-
 24 ferred to in subparagraph (A),

1 the consumer (or the class with regard to a class ac-
2 tion or series of class actions) may not be awarded
3 or otherwise recover costs for attorney’s fees in-
4 curred after the date such offer is rejected.”.

5 (d) FACTORS FOR CONSIDERATION.—Section 813(b)
6 of the Fair Debt Collection Practices Act (15 U.S.C.
7 1692k(b)) is amended—

8 (1) in the matter preceding paragraph (1), by
9 striking “liability in any action” and inserting “any
10 award”; and

11 (2) by striking paragraph (1) and inserting the
12 following:

13 “(1) in any action under subsection (a)(2)(A),
14 the frequency and persistence of noncompliance by
15 the debt collector, the nature of such noncompliance,
16 the extent to which the such noncompliance was in-
17 tentional, and the amount of actual damages award-
18 ed; or”.

19 (e) BONA FIDE ERRORS.—Section 813(c) of the Fair
20 Debt Collection Practices Act (15 U.S.C. 1692k(c)) is
21 amended—

22 (1) by striking “(c) A debt collector may not”
23 and inserting the following:

24 “(c) BONA FIDE ERRORS.—

1 “(1) IN GENERAL.—A debt collector may not”;

2 and

3 (2) by adding at the end the following:

4 “(2) RELIANCE ON RULES OF CIVIL PROCE-
5 DURE.—A debt collector may not be held liable in
6 any action brought under this title, if the debt col-
7 lector shows by a preponderance of the evidence that
8 the violation resulted from good faith compliance
9 with—

10 “(A) the Federal Rules of Civil Procedure;

11 “(B) in the case of a proceeding in a State
12 court, the rules of civil procedure available
13 under the laws of such State; or

14 “(C) a nonjudicial foreclosure pro-
15 ceeding.”.

16 **SEC. 5. MORTGAGE SERVICERS’ REGULATORY BURDEN RE-**
17 **LIEF.**

18 (a) IN GENERAL.—The Fair Debt Collection Prac-
19 tices Act (15 U.S.C. 1692 et seq.) is amended—

20 (1) by redesignating section 818 as section 819;

21 and

22 (2) by inserting after section 817 the following:

23 **“§ 818. Mortgage servicer exemption**

24 “(a) EXEMPTION.—Any servicer of federally related
25 mortgage loans secured by first liens shall be exempt from

1 the requirements of sections 807(11) and 809 in connec-
 2 tion with the collection of any debt that is a federally re-
 3 lated mortgage loan secured by a first lien, if the servicer
 4 is—

5 “(1) a debt collector; and

6 “(2) a servicer for whom the collection of delin-
 7 quent debts is secondary to the primary function of
 8 the servicer of servicing federally related mortgage
 9 loans.

10 “(b) VALIDATION STATEMENT.—If a debt collector is
 11 exempt, pursuant to subsection (a), from the requirements
 12 of section 809 with respect to any federally related mort-
 13 gage loan to a consumer that is secured by a first lien,
 14 the servicer shall provide to the consumer, at least 30 days
 15 before any acceleration of the debt and without charge to
 16 such consumer—

17 “(A) a notice of the consumer’s right to re-
 18 ceive a validation statement; or

19 “(B) a validation statement.

20 “(2) QUALIFIED VALIDATION REQUESTS.—

21 “(A) RESPONSE TO REQUEST.—If a
 22 servicer described in paragraph (1) provides a
 23 consumer with a notice under subparagraph (A)
 24 of such paragraph, the servicer shall provide
 25 such consumer with a validation statement not

1 more than 10 days after receiving a qualified
2 validation request from such consumer.

3 “(B) NO DELAY REQUIRED.—No provision
4 of this title shall be construed as requiring a
5 servicer described in paragraph (1) to delay ac-
6 celeration, foreclosure, or any other action with
7 respect to a federally related mortgage loan for
8 which the servicer provided a notice to the con-
9 sumer under paragraph (1)(A) due to the re-
10 ceipt by such servicer of a qualified validation
11 request from such consumer.

12 “(C) RECEIPT AND HANDLING OF RE-
13 QUESTS.—A servicer described in paragraph (1)
14 may establish a separate and exclusive office for
15 the receipt and handling of any qualified valida-
16 tion request from any consumer under this sub-
17 section if the servicer provides notice of that
18 fact and the address of the office to the
19 consumer—

20 “(i) in the notice provided to such
21 consumer pursuant to paragraph (1)(A); or

22 “(ii) separately by first class mail
23 with prepaid postage.

24 “(3) REASONABLE ESTIMATES OF THIRD PARTY
25 CHARGES.—A servicer described in paragraph (1)

1 shall not be liable under this title for any inaccurate
 2 amount contained in a validation statement provided
 3 to a consumer with respect to a federally related
 4 mortgage loan secured by a first lien to the extent
 5 the inaccurate amount—

6 “(A) relates to costs for services to be pro-
 7 vided by third parties; and

8 “(B) constitutes a reasonable estimate of
 9 such costs.

10 “(c) DEFINITIONS.—In this section:

11 “(1) FEDERALLY RELATED MORTGAGE LOAN.—

12 The term ‘federally related mortgage loan’ has the
 13 meaning given the term in section 3(1) of the Real
 14 Estate Settlement Procedures Act of 1974.

15 “(2) QUALIFIED VALIDATION REQUEST.—The

16 term ‘qualified validation request’ means a written
 17 request for a validation statement from a consumer
 18 to a servicer that—

19 “(A) includes the name and account num-
 20 ber of the consumer or such other information
 21 as may be necessary to allow the servicer to
 22 identify such name and account number; and

23 “(B) is not written on or otherwise in-
 24 cluded with a payment coupon or other pay-
 25 ment medium provided by the servicer.

1 “(3) SERVICER; SERVICING.—The terms
 2 ‘servicer’ and ‘servicing’ have the meanings given
 3 those terms in section 6(i) of the Real Estate Settle-
 4 ment Procedures Act of 1974.

5 “(4) VALIDATION STATEMENT.—The term ‘vali-
 6 dation statement’ means a statement of—

7 “(A) the total amount a consumer must
 8 pay, as of a particular date, to bring the con-
 9 sumer’s loan current; and

10 “(B) the total amount a consumer must
 11 pay, as of a particular date, to satisfy the loan
 12 in full.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 for the Fair Debt Collection Practices Act (15 U.S.C.
 15 1692 et seq.) is amended—

16 (1) by redesignating the item relating to section
 17 818 as an item relating to section 819; and

18 (2) by inserting after the item relating to sec-
 19 tion 817 the following:

“818. Mortgage servicer exemption.”.

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